In the High Court of Judicature at Madras

Dated : : 16.10.2006

Coram

The Honourable Mrs.Justice PRABHA SRIDEVAN

Writ Petition No.28364 of 2006
and
M.P.No.1 of 2006
- - -

Tamil Nadu Electricity Board
Hire Vehicles Contrcactors Association
Chennai 600 118. .. Petitioner

v

1. The Chairman
Tamil Nadu Electricity Board
Anna Salai
Chennai.2.

2. The Chief Engineer
Chennai North Zone (Distribution)
Tamil Nadu Electricity Board
5-A, Block 802, Anna Salai
Chennai 600 002

3. The Member Distribution
Tamil Nadu Electricity Board
802, 10th Floor, Anna Salai
Chennai 600 002.

4. Sri Amman Enterprises
109, Sarma Nagar
Vysarpadi
Chennai 600 039.

5. Babu Travel AGency
29, Sunguvar Agraharam Street
Chintadripet
Chennai 600 002.

6. Sri BalajiTravels,
122, Kumaran Nagar, 4th street
Tondiarpet, Chennai 600 081 .. Respondents

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Writ petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, to quash the award of contract in Ref.No.374, 375 and 376 of 2006 dated 21.06.2006 under tender No. E 748 opened on 15.03.2006 with modified tender condition in Ref. No. A 410/06 dated 05.07.2006 awarded by the second respondent in favour of respondents 4 to 6.

For petitioner : Mr. R.G.Annamalai
For respondents : Mr. R.Subbiah for R1 to R3
Mr.J.Divakar for R4

O R D E R

Heard learned counsel for the petitioner and respondents.

2. The writ petitioner is an Association of contractors who hire vehicles for the Electricity Board. The petitioner is aggrieved that he was not awarded the tender for supplying of vehicle on hire to the Electricity Board for the year 2005-2006. Five companies applied for tenders. They are, respondents 4 to 6, the petitioner and one another person who is not before this Court. Respondents 4 to 6 were awarded the tender.

3. The grievance of the petitioner is that the fourth respondent has been awarded the tender though its performance was noted to be poor by the Divisional Engineer Tondiarpet; likewise, the 5th respondent was awarded the tender, though it owns no vehicles and it has got the tender as a partner; and 5th respondent is even now claiming bills as "proprietors". As regards the 6th respondent, according to the petitioner, their performance is also considered to be poor and the public has also made complaints against it. According to the petitioner, by accepting the tender at the rate of Rs.700/- per day for 24 hours, there will be loss to the Electricity Board to the extent of Rs.73,44,000/- for two years. According to the petitioner, the tender was accepted directly without any negotiation with other contractors and therefore the award is liable to be quashed.

4. It is also alleged by the petitioner that respondents 4 to 6, who were awarded the contract, had not produced the Service Tax Certificates. Income Tax Clearance Certificates and PAN Cards as stipulated in the tender conditions. The petitioner also alleges that the tender conditions were modified to suit the convenience of respondents 4 to 6 and the time limit was also extended to favour respondents 4 to 6. Learned counsel for the petitioner would submit that for all these reasons, the award of the tender in favour of respondents 4 to 6 must be quashed.

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5. Learned standing counsel appearing on behalf of respondents 1 to 3/ Electricity Board filed his counter and submitted that on a comparison of the rates quoted by the five companies , the tender was awarded to respondents 4 to 6, because they had quoted the lowest price and have satisfied the bid qualification required as regards pervious experience. Learned counsel further submitted that the performance of all the firms was assessed on the basis of the Field Officers' report and only thereafter the tender was awarded.

6. As regards the allegation that the assessment of the 4th respondent, whose performance was poor has been ignored, it was submitted that by the letter dated 21.04.2006, the Superintending Engineer/CEDC/North had stated that though the Executive Engineer/O & M Tondiarpet had certified that the 4th respondent's performance was unsatisfactory, there were no records to support the same. On the other hand, the Executive Engineer/O&M, /Vysarpadi assessed the performance of the 4th respondent as satisfactory and has also given satisfactory report regarding the same. As regards the 5th respondent, the Field Officers had found the performance of the 5th respondent satisfactory. The allegation that the 5th respondent does not own any vehicle is denied. The tender rate at Rs.700 per day was accepted only after ensuring its reasonableness and as such, there is no loss to the Board. The petitioner had offered a rate Rs.1100/- per day, which is higher than what the successful tenderers had offered. The allegation that the Board will lose a sum of Rs.74,46,000/-for a period of two years, which is the period of the tender, is denied.

7. Records in this case were produced today. It is seen therefrom that while short listing the tenders, the members of the petitioner Association have been taken in the zone of consideration. The Superintending Engineer had given his remarks with regard to each of the operators in the north region circle as satisfactory. The 5th respondent figures in this report as also three of the members of the petitioner/Association. Similarly, the Additional Chief Engineer, Chennai Development Circle had assessed the performance report of the three of the members of the petitioner/Association and found it satisfactory. By letter dated 06.04.2006, the Superintending Engineer, CEDC/North has given a satisfactory report for respondents 5 and 6 and two other members of the petitioner/Association.

8. The hire charges stated by each tenderers shows that while the petitioner has quoted Rs.1100/- per day, respondents 4 to 6 have quoted Rs.700/- per day. As regards the performance factor, while respondents 4 to 6 offer 9 kms per litre, as regards the petitioner it is 8 kms. per litre. The 5th respondent has filed a xerox copy of the registration of their firm with the Registrar of Firms, the PAN card etc. Each of the applicants has enclosed the

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required documents along with their applications and it is submitted by the learned counsel for respondents 4to 6 that without these, the tenders would not have been considered at all. As regards the service tax, in order to receive the amount every month, every hirer should produce the required documentary proof and the service tax registration number. So, the furnishing of these details would come only after the tender has been awarded.

9. The scope of interference of this Court under Article 226 of Constitution of India in such matters is very limited. When the dispute is between rival tenderers, the court should not interfere under Article 226 when there is substantial public interest or transaction is entered into mala fide. The Supreme Court in the decision reported in (1999 (1) SCC 492) (RAUNAQ INTERNATIONAL LTD v. I.V.R. CONSTRUCTION LTD. AND OTHERS ) has observed as follows:

> "The same considerations must weigh with the Court when interim orders are passed in such petitions. The party at whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. The interim order could delay the project, jettison finely worked financial arrangements and escalate costs. Hence the petitioner asking for interim orders in appropriate cases should be asked to provide security for any increase in cost as a result of such delay or any damages suffered by the opposite party in consequence of an interim order. Otherwise public detriment may outweigh public benefit in granting such interim orders. Stay order or injunction order, if issued, must be moulded to provide for restitution."

Similarly, the Supreme Court in the decision reported in 1995 1 SCC 478 (NEW HORIZONS LTD. V UNION OF INDIA) has held as follows:

> " "Wednesbury principle of reasonableness" to which reference has been made in principle (5) aforementioned is contained in associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. In that case Lord Greene, M.R. has held that a decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. In Tata

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Cellular s this Court, has mentioned two other facets of irrationality:

1) It is open to the court to review the decision-maker's evaluation of the facts. The Court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld.

2) A decision would be regarded as unreasonable if it is partial and unequal in its operation as between different classes".

The tender has been awarded for contract of vehicles for the FOC Centres after verifying the original documents and the tenderers are also operating the vehicles only for the Board in pursuance of the award. Seen from this perspective and tested by the principles laid down in the decisions above, it is very difficult to see any irregularity in the impugned action. None of the defects pointed out by the learned counsel for the petitioner are sustainable. The successful tenderers are all income tax assesses and they have agreed to abide by all the conditions subject to which the tenders will be awarded and they have quoted a low price. It is seen that Field Officers of the Board have gone and assessed the performance of each contractor and it is only thereafter that , the award has been finalised. It is seen from the counter that the vehicles have also been produced before the committee which has finalised the award of tenders. The decision satisfies the standard of reasonableness. There is no scope for interference by this Court. Hence, the writ petition is dismissed. Conseqeuntly,connected M.P. Is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

kvsg

To

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   Tamil Nadu Electricity Board
   Anna Salai
   Chennai.2.

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+1cc to Mr.R.G.Annamalai, Advocate Sr 48285

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km/2.11.

W.P.No.28364 of 2006
& connected M.P.1/2006

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